



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Engineered Modular Structures Inc.

**File:** B-236804

**Date:** September 20, 1989

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### DIGEST

Where a bid offers a minimum bid acceptance period of 60 days in response to a sealed bid solicitation requiring no less than 120 days, the bid is nonresponsive and must be rejected despite the bidder's contention that it intended to offer 160 days.

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### DECISION

Engineered Modular Structures Inc. (EMS) protests the rejection of its apparent low bid as nonresponsive under invitation for bids (IFB) No. DAAK01-89-B-0072, issued by the U.S. Army Troop Support Command (TROSCOM). EMS asserts that the agency improperly determined that its bid was nonresponsive because it offered a bid acceptance period that was shorter than the minimum 120-day period required by the solicitation. EMS also states that TROSCOM acted improperly when it requested a pre-award survey after EMS had submitted a nonresponsive bid and in requesting extension of the acceptance period.

We summarily dismiss the protest pursuant to our Bid Protest Regulations (4 C.F.R. § 21.3(m) (1989)) because it is clear on the face of the protest that it is without merit.

The solicitation required that bidders specify a minimum acceptance period of 120 days and contained an express warning that bids allowing less than the minimum acceptance period would be rejected. TROSCOM rejected EMS's bid as nonresponsive because it specified a bid acceptance period of only 60 days.

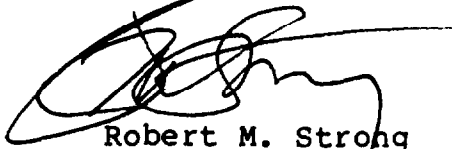
EMS asserts that it contacted the agency 16 days after bid opening, advising that it had made a typographical error in its bid and that it in fact had meant to allow a 160-day acceptance period.

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A bid acceptance period mandated in a solicitation is a material requirement which must be complied with at bid opening in order for the bid to be responsive. Roadrunner Moving & Storage, Inc., B-234616, Mar. 2, 1989, 89-1 CPD ¶ 230. When a bidder fails to specify in its bid that it is offering an acceptance period at least as long as that required by the government, the bid must be rejected. General Elevator Co., Inc., B-226976, Apr. 7, 1987, 87-1 CPD ¶ 385. Compliance with the required minimum bid acceptance period is necessary so that all bidders share the same business risks of leaving their bids open for acceptance by the government for the same minimum amount of time. Id.

A nonconforming acceptance period specified in a bid is not a minor irregularity or mistake which may be explained, changed, or corrected after bid opening. J.S. Petersen & Co., Inc., B-228792, Sept. 1, 1987, 87-2 CPD ¶ 216. Although EMS asserts that it would not have intentionally submitted a nonresponsive bid, the fact remains the EMS by inserting the figure "60" in the blank provided in the IFB, legally committed itself only to a 60-day acceptance period, and any explanations for that action cannot be considered after bids have been opened. General Elevator Co., Inc., B-226976, supra.

Bid opening was June 1, 1989, and the bidder did not learn that its bid had been rejected until late August. In the interim, the agency erroneously accepted the protester's correction of its bid and conducted a pre-award survey of the protester, before concluding that the protester's bid was nonresponsive and could not be accepted. It is unfortunate that TROSCOM did not sooner recognize and communicate to the protester the fact that its bid was nonresponsive on its face, and spared the protester the needless expense of a pre-award survey. However, this situation does not change the fact that EMS's bid was properly rejected by the agency as nonresponsive.



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